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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

ATTN: The Honorable Joseph Chachkin
Administrative Law Judge

RE: Trinity Broadcasting of Florida, Inc. et al., MM Docket
No. 93-75, Application of Trinity Broadcasting of
Florida, Inc. (BRCT-911001LY)

Dear Mr. Caton:

Transmitted herewith on behalf of Trinity Broadcasting of Florida, Inc. is an original and six copies of its "Extraordinary Showing" submitted in connection with the above-referenced docketed proceeding.


Please note that only one copy of the proffered evidentiary material is included with this filing.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED,

By:


Joseph E. Dunne III
One of Trinity Broadcasting of
Florida, Inc.'s attorneys

JED:gmc:B26
enclosures

xc: All Per Attached Certificate of Service
Michael S. Everett

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In Re: Applications of)	MM Docket No. 93-75
)	
TRINITY BROADCASTING OF FLORIDA,)	File No. BRCT-911001LY
INC.)	
For Renewal of License of)	
Station WHFT(TV), Miami, Florida)	
)	
and)	
)	
GLENDAL E BROADCASTING COMPANY)	File No. BPCT-911227KE
For Construction Permit)	
Miami, Florida)	

TO: The Honorable Joseph Chachkin
Administrative Law Judge

EXTRAORDINARY SHOWING

Trinity Broadcasting of Florida, Inc. (TBF), by its undersigned counsel and pursuant to the Presiding Officer's instructions during the Prehearing Conference of June 24, 1993 (Tr. 56), hereby submits this "Extraordinary Showing" requesting the Presiding Officer to allow TBF to submit into evidence as part of its showing concerning its renewal expectancy, the following: 1) 17 video tape testimonies from witnesses impacted or effected by WHFT programming during the license term; 2) written "Video Testimony Format" declarations executed by those providing videotape testimony; 3) transcripts of the videotape testimony; 4) Declarations from Michael S. Everett, Glinda M. Corbin, and Colby M. May authenticating the videotape testimony submitted; and, 5) 100 "Written Testimonial Forms" in English and Spanish from viewers of WHFT attesting to the impact of the station's programming in

their lives, including an "Affidavit of Translation" from the person who translated the Spanish language Written Testimonial Forms. As grounds for its Extraordinary Showing, TBF shows and states as follows.

1. The Presiding Officer has limited the number of affidavits or declarations from witnesses attesting to the station's performance to 30, and has also seemingly foreclosed the possibility of a hearing in Miami where the witnesses' testimony may be heard and their credibility and demeanor evaluated in person. The evidence provided by the witnesses' demeanor is likely then to be lost. Absent a grant of its Extraordinary Showing TBF will be critically limited in showing its entitlement to a renewal expectancy because it is: 1) being limited to a small number of witnesses on its behalf less, in some instance, than that permitted FM renewal applicants in other cases; 2) foreclosed by the procedure from gaining the impact, force and credibility that the live testimony of its witnesses would provide; and, 3) critically limited because much of its programming, religious programming, prompts a subjective and personal response from the station's whose impact may be less credible absent live testimony.

2. The 30 witnesses to which TBF is limited compares unfavorably to the number of witnesses permitted in other cases where the licensee had a great deal less at stake. For example, in Pillar of Fire, 99 F.C.C.2d 1256, 56 R.R.2d 601 (Rev. Bd. 1984), an AM station licensee was allowed to present the testimony of 31 witnesses and a sampling of 1593 letters from the public. In Intercontinental Radio, Inc., 98 F.C.C.2d 608, 56 R.R.2d 903 (Rev.

Bd. 1984), the licensee was allowed the benefit of 50 public witnesses and 14 unsolicited complimentary letters from the public. In Radio Station WABZ, Inc., 90 F.C.C.2d 818, 51 R.R.2d 1507 (1982), the licensee was able to put on 40 witnesses on its own behalf. In Metroplex, Inc. (WHYI-FM), 4 FCC Rcd 8149, 67 R.R.2d 185 (Rev. Bd. 1989), a licensee with only a one year renewal term was allowed to present 23 witnesses and over 90 letters from the public. In short, the evidence which TBF here requests the Presiding Officer to accept as part of its renewal expectancy showing is not of a greater amount or of more difficulty to absorb than what is normally considered in the renewal of a radio station.

3. The limited number of witnesses permitted restricts the number of people from the general public which TBF may present to show that its programming meets the needs of the community and is appreciated by the members of its viewing audience. This limitation is particularly disabling to TBF because it imposes on TBF a Hobson's choice--if it relies on the testimony of its regular viewers it deprives itself of the testimony of community leaders and others who have a more long term relationship with the licensee, who may be more knowledgeable about the station's entire record, and who may testify in more traditional terms concerning the station's record. If the station relies on community leaders, TBF loses the unique view of its record provided by its regular viewers, who, because of its format, have a unique relationship to the station and extraordinary stories to relate concerning how the station's programming has impacted their lives. As the Commission has observed in other renewal cases, the station's "regular viewers

are in the best position to judge the station's performance." Radio Station WABZ, Inc., supra, 51 R.R.2d at 1527. See also, Intercontinental Radio, Inc., supra, 56 R.R.2d at 921. These are precisely the viewers that the limitation on witnesses requires TBF to exclude from its witness list.

4. Much, in fact most of TBF's programming is religious in nature. During the prehearing conference the Presiding Officer expressed doubt whether such programming could be credited under a renewal expectancy showing.^{1/} The Presiding Officer's doubt on this score seeming is addressed by the Review Board in Pillar of Fire, supra, 57 R.R.2d at 614, where it stated that "[r]eligious programming responsive to needs is credited as part of a renewal expectancy." See also, Radio Station WABZ, Inc., supra, Intercontinental Radio, Inc., supra, 56 R.R.2d at 925 (noting the importance of religion in the African-American community). Under Pillar of Fire, then, TBF may show that its religious programming treats real human and community needs, which the witness limitation compromises its ability to do.

5. Feedback from the community is particularly necessary to gauge the public interest value of TBF's programming. Because of its religious format, TBF's programming is directed toward people and gauges its effectiveness primarily if it provokes a response

^{1/} Judge Chachkin: "But it seems to me the Commission's focus on, insofar as renewal expectancy, is on public--news and public affairs. Now, do you have a different view of you public witnesses? And if so, the relevance of whether it's religion or music, it seems to me that's not considered the type of thing that the Commission considers in determining whether you're entitled to a renewal expectancy." Prehearing Conference of June 24, 1993, Tr. 42.

from viewers. That programming is designed to appeal to individual viewers and to persuade them to take specific actions. Not only are viewers, as the evidence submitted shows, invited or exhorted to become believers, they are also invited or exhorted to do specific acts, such as giving up addictions to alcohol or drugs, or to improve their education, which are clearly in the public interest. Because the results of so much of TBF's programming promotes changes in individuals which can only be considered in the public interest, the impact of this programming--its effectiveness--is an important part of the station's claim to a renewal expectancy which the Presiding Officer's limitations foreclose it from proving.

6. The submitted testimony also shows that TBF's programming serves the public interest in real and dramatic ways. Among the video testimonies presented are testimonies of individuals who credit the programming which they saw on WHFT for: ending a long-term addiction to drugs; ending a long term addiction, in terms of two bottles of Jack Daniels a day, to alcohol; preventing a woman who was depressed from committing suicide; giving hope and encouragement to an AIDS victim. In this context, the Commission has wisely determined that the religious nature of the programming is largely irrelevant if the programming treats real needs. " The mere fact that presentation may be bracketed within a religious genre does not disqualify it from being considered responsive to the public interest." Pillar of Fire, supra, 57 R.R.2d at 612, n.26. Clearly news and public affairs programming which treats what is clearly a major problem in the Miami area, such as drugs, is in

the public interest. Shouldn't TBF be allowed to present evidence to show that it serves the public interest by broadcasting programming which cures some individuals of their alcohol and drug addictions? Isn't programming which convinces some who are suicidal to continue living in the public interest? TBF should be allowed to make a showing that its programming impacts some people's lives in exactly this way, and, therefore, that it serves the public interest.

7. TBF's program format, and the relationship between the station and its viewers, creates a unique connection between the station and the community on which TBF should also be allowed to present evidence. TBF should be allowed to present evidence concerning what its station means to its viewers. TBF's program service and mission are not limited to the presentation of informative programming. Its raison d'etre is to cause some people who are addicts to give up drugs and alcohol, or to give hope and encouragement to someone who may be depressed, even suicidal. This personal relationship between its viewers and the station is an important part of the station's renewal expectancy which the existing limitations do not allow TBF to prove.

8. TBF also submits and asks the Presiding Officer to consider testimony that is presented on videotape, since apparently there will be no opportunity for the Presiding Officer to evaluate, in person, the remainder of the testimony considered under the renewal expectancy. The videotape testimony is vital to the presentation of TBF's renewal expectancy showing for two reasons. Without video testimony TBF will be deprived of the impact, force

and immediacy that the live presentation of its renewal expectancy testimony would be expected to have on the trier of fact. Secondly, and in this instance more importantly, the video testimonies recount stories of conversion and cure--from drug addiction, alcoholism, crack cocaine--which are both dramatic and outside the ambit of most people's experience. These stories, in short, strain credulity. The witnesses tell stories that are so personal and extraordinary that it is easier, when confronted with a cold written statement, to dismiss these witnesses out of hand. It is vital to assess the credibility of these witnesses to see them.

9. Video tapes have been admitted into evidence in FCC proceedings before where statements in the program were at issue, e.g., Area Christian Television, Inc. 60 R.R.2d 862 (1986), or in special circumstances, such as where the presentation of demeanor evidence made it important that a deposition transcript alone not be relied upon, see, Valley Broadcasters, Inc., 100 F.C.C.2d 522 (Rev. Bd. 1985). Other courts have also had occasion to recognize that videotape evidence is more accurate and persuasive than transcripts or written statements, particularly where demeanor is important. For example, in U.S. v. Criden, 648 F.2d 814, 831 (3rd Cir. 1981) the court pointed out that a videotape deposition "...was more informative as evidence than a stenographically recorded transcript." The court noted that "[l]ost in the written words are gestures, expressions, intensity of delivery, and other "body language" which convey more than the printed page can hold." Id. See also, U.S. v. King, 552 F.2d 833, 841 (9th Cir. 1976). In

U.S. v. Salerno, 828 F.2d 958, 960 (2d Cir. 1987), the court noted that videotaped depositions more accurately conveyed the meaning of words and preserved demeanor evidence. For precisely these reasons, since demeanor evidence will not be available to the trier of fact in any other way, and the credibility of these witnesses, because of the extraordinary stories that they tell, will uniquely be an issue, videotape testimony is both necessary and proper.

WHEREFORE, the foregoing premises considered, Trinity Broadcasting of Florida, Inc. respectfully urges the Presiding Officer to permit it to submit into evidence as part of its showing concerning its renewal expectancy certain evidence in addition to the 30 Declarations and Affidavits from "non-public" witnesses which it has provided the parties this date.

Respectfully submitted,

**TRINITY BROADCASTING OF FLORIDA,
INC.**

By: 

Colby M. May, Esq.
Joseph E. Dunne III, Esq.

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By: 

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(202) 659-4700

Its Attorneys

August 10, 1993

CERTIFICATE OF SERVICE

I, Glinda M. Corbin, a paralegal in the law offices of May & Dunne, Chartered, hereby certify that I have caused to be hand delivered this 10th day of August 1993, a copy of the foregoing EXTRAORDINARY SHOWING to the following:

The Honorable Joseph Chackin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 226
Washington, D.C. 20554

James Shook, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

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Law Offices of David E. Honig
1800 N.W. 187th Street
Miami, Florida 33056
(Counsel for Spanish American League Against
Discrimination)

By: Glinda M. Corbin
Glinda M. Corbin

*Federal Express

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DECLARATION

I, Michael S. Everett, under penalty of perjury of the laws of the State of Florida and the United States of America, hereby swear that the following declaration is true and correct.

1. I am now and have been since 1988 the general manager of WHFT, channel 45, Miami, Florida. As part of supervising all aspects of station operation, I have, on occasion, supervised program productions for the station.

2. In late June, 1993, I asked all nine of the pastors who serve as hosts on the "Praise the Lord--South Florida" program to ask members of their congregations who have had a life-changing experience by watching a channel 45 program to give the station a call. Calls came in to my secretary, Jerry Magala, who asked the caller to describe the life changing experience that they wished to relate. Those who called with what I believed to be compelling life changing experiences were asked if they would ^{only} the station to make a video tape of their story, swear under penalty of perjury that what they were relating was true, and allow us to submit it to the FCC. Those who agreed to these conditions were asked to come to the studio on a particular day to videotape their testimonies.

3. All the video testimonies were taped in exactly the same way. When the person arrived at the studio I introduced myself and handed them the "Video Testimony Format" sheet which I have attached. I asked each to fill out the sheet and sign it, and to begin their testimony by reading the first portion and filling in

the blanks with their address, etc. I also asked them to tell their story as simply and shortly as possible, and then to end by reading the last few lines. When they were finished I asked them to hold up the "Video Testimony Format" sheet to indicate from what they were reading. When the person indicated they understood the instructions they took their place in front of the camera and filming began.

4. Each video testimony was filmed once without interruption or stage directions, with the exception that several witnesses had to be reminded to hold up the "Video Testimony Format" sheet when they finished. The filming was done under my direct supervision using a Ikegami 53 camera operated in each case by Robin Downing, our Production Coordinator. Hal Wimmers, a master control operator and video technician, was also present handling the video and audio recording.

5. Since the initial filming was done on beta equipment, at my instruction and under my supervision Mr. Wimmers copied each tape onto a VHS format tape. At no time during the filming or copying of the video testimonies were any edits made to the tapes. On tape 1 we had recorded the June 29 testimony of Stafford C. Nairn, Jr. and the July 2 testimony of: Marcus Ramirez; Lori Beth Perez; Joseph Arthur Miller; Warren P. Schreier; and, Suzanne Schreier. Tape 2 included the: July 6 testimony of Ron Albanese, Daphne C.D. Boyhan, and, Daniel H. Boyhan; the July 9 testimony of Dr. Chris Enriquez and Marilyn Carpenter; and, the July 13 testimony of Bonnie L. Lide and Peachie Mejias. Tape 3 included:

the July 20 testimony of Michael L. Williams; the July 23 testimony of Barbara Lynn Linthicum; and, the July 27 testimony of Frank E. Enzinna.

6. Each tape, when complete, was sent to the law offices of May & Dunne, Chartered by Federal Express, with original signed copy of each witness' "Video Testimony Format" sheet.

Executed this 9th day of August, 1993.

By: Michael S. Everett
Michael S. Everett

VIDEO TESTIMONIAL FORM

My name is (state your name). I live at (give your address, which must be within the channel 63 service area). I have been watching WHSG-TV, channel 63 on a regular basis since the station went on the air in February, 1991. Watching channel 63 has been an experience that has changed my life.

(Describe in your own words for a few minutes (no more than five), how watching channel 63 has affected your life).

_____.

What I have just described is true. I give this testimony under penalty of perjury of laws of the state of Georgia, and I understand that a video tape of this testimony will be submitted to the Federal Communications Commission in connection with WHSG's renewal application.

Signature

Name: _____

Address: _____

Telephone Number: _____

Date: _____

Program Title: _____

Program Number: _____

Production Date: _____

DECLARATION

I, Glinda M. Corbin, under penalty of perjury of the laws of the District of Columbia and the United States of America, do hereby swear that the following is true and correct.

1. I have worked for May & Dunne, Chartered since December, 1983. I am now the Office Manager of the Law Firm. As part of my job, I normally receive overnight express deliveries, including those made by Federal Express. I received a VHS format video tape from Mike Everett in Miami on or about the 13th or 14th of July, another on July 27, and the last on August 2.

2. I was instructed to prepare accurate verbatim transcripts of all the testimony on the video tapes, which I did between July 23 and August 6, 1993. From the three tapes I transcribed the testimony of: Stafford C. Nairn, Jr.; Marcus Ramirez; Lori Beth Perez; Joseph Arthur Miller; Warren P. Schreier; Suzanne Schreier; Mabel Worrell; Ron Albanese; Daphne C.D. Boyhan; Daniel H. Boyhan; Dr. Chris Enriquez; Marilyn Carpenter; Bonnie L. Lide; Peachie Mejias; Michael L. Williams; Barbara Lynn Linthicum; and, Frank E. Enzinna.

3. On August 5, pursuant to Mr. May's instructions, I took the three original tapes I had received from Mr. Everett home. I hooked up two four head Sharp VCR's by inserting a cable in the video and audio "out" jacks on one VCR and inserting the same cable on the "in" jacks on another. One machine I set to play and the other to record, and I taped all the material on the three tapes

onto one "composite" tape. In copying the material I did my best to ensure that the material wasn't changed, edited or altered in any way, and it was not, to the best of my knowledge. Following the copying of all material onto one tape, I copied the "composite" tape five times.

4. The original and the duplicate tapes have remained in our office under my custody and control, or that of Mr. May, since I have completed the copying. No changes, alterations or revisions have been made to the tapes other than those I have described herein.

Executed this 10th day of August, 1993.

By: Glinda M. Corbin
Glinda M. Corbin

DECLARATION OF COLBY M. MAY

I, Colby M. May, under penalty of perjury of the laws of the District of Columbia and the laws of the United States of America, do hereby swear that the following is true and correct;

1. I received from Glinda M. Corbin the original videotape testimonies on or about July 13 or 14, another on July 27 and the last on August 2. After reviewing the videotapes I gave them to Ms. Corbin and instructed her to prepare accurate, verbatim transcripts of all the testimonies on the videotapes.

2. I also instructed Ms. Corbin to copy the original three videotapes onto one master tape and then to make copies of the videotape testimonies. She did so on August 5, and brought the original tapes and the copies to me on August 6. These videotapes have remained in this office under my control or that of Ms. Corbin since that date, and there have been no changes, alterations, or edits to the tapes to my knowledge.

Executed this 10th day of August 1993

By: 

Colby M. May

DOCUMENT OFF-LINE

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93-75

VIDEO TESTIMONY FORMAT

My name is (state your name). I live at (give your address). I have been watching WHFT-TV, Channel 45, on a regular basis since (tell how long you've been watching channel 45). Watching channel 45 has been an experience that has changed my life.

(Describe in your own words, for a few minutes (no more than five), how watching channel 45 has effected your life.

What I have just described is true. I give this testimony under penalty of perjury of the laws of the state of Florida, and I understand that a videotape of this testimony will be submitted to the Federal Communications Commission in connection with WHFT's renewal application.

NAME: STAFFORD C. NAIRN JR.

SIGNATURE: Stafford C. Nairn Jr.

ADDRESS: 1215 N.E. 128th St.

North Miami, Florida 33161

PHONE: 893-8476

PROGRAM TITLE: _____

PROGRAM NUMBER: _____ PRODUCTION DATE: 6/29/93